Firstly, because this is a sentence of a deterrent nature, in the sense that no similar sentence has been imposed in the past, though I think it should be the normal punishment for driving of this kind.

Secondly, because of the long gap of 16 months between the appearance of the defendant in the Magistrate's Court and the sentence which was imposed by him.

I cannot disagree with the magistrate that an immediate custodial sentence of imprisonment is a correct one, nor with his endorsement of the licence, nor with his disqualification of the defendant from driving for two years.

Because of the factors which I have mentioned, however, while I am left in no doubt that some custodial sentence is necessary, I consider that the sentence of six months can properly be reduced to one of two months and I order accordingly. The other sentences imposed by the magistrate will stand.

Order accordingly.

Solicitors: *Abrahams Davidson & Co.*

Reported by *Ng Sheau Jiuan*

MALAYSIAN REPORTS

Ghazali bin Mat Noor v Southern Bank Berhad and four other appeals

SUPREME COURT (KUALA LUMPUR) – CIVIL APPEAL NOS 575, 576, 577, 578 AND 579 OF 1987
MOHAMED AZMI, HARUN AND AJAIB SINGH SCJJ
20 MARCH AND 15 APRIL 1989

Bankruptcy – Validity of bankruptcy notice – Bankruptcy notice stating rate of interest payable but which did not quantify interest sums – Bankruptcy Act 1967, s 3(1)

In these cases the bankruptcy notice issued stated the rate of interest payable but did not quantify the interest sums payable. Thus in Civil Appeal No 575 of 1987 the bankruptcy notice demanded payment of 'the sum of $10,459.20 plus interest thereon at the rate of 15.8% per annum on monthly rests from 31 May 1984 to date of realization and $373.00 costs'. The issue raised in the appeals was whether the bankruptcy notices were valid.

Held, allowing the appeals:

(1) For a bankruptcy notice to be valid it should state the exact amount due at the date of the bankruptcy notice. The judgment debtor must know the exact amount he has to pay to avoid bankruptcy. He does not have to make calculations or enquiries.

(2) In the present appeals, as the interest sums payable have not been quantified, the bankruptcy notice in all five cases are invalid ab initio and consequently all subsequent proceedings to these bankruptcy notices are a nullity.

Case referred to

1 *Low Mun* v *Chung Khiaw Bank Ltd* [1988] 1 MLJ 263 (folld)

Appeal from: Bankruptcy Nos 43-48-1986, 43-604-1986, 43-654-1986, 43-776-87 (High Court, Kota Bharu)

C Jegathesan for the appellants in all the five appeals.
Amin bin Mohd Zain for the respondent in CA 575 of 1987.
Zamzuri b Mohd Hussin for the respondents in CA 576 and 577 of 1957.
Yusof bin Haji Mohd Noor for the respondent in CA 578 of 1987.
HS Lim for the respondent in CA 579 of 1987.

Cur Adv Vult

Harun SCJ (delivering the judgment of the court): The issue raised in these appeals is the validity of a bankruptcy notice which, inter alia, states the rate of interest payable but did not quantify it. Thus in Civil Appeal No 575 of 1987, the bankruptcy notice demanded payment of:

> the sum of $10,459.20 plus interest thereon at the rate of 15.8% per annum on monthly rests from 31 May 1984 to date of realization and $373 costs ...

In Civil Appeal No 576 of 1987:

> plus further interest at the rate of 8% per annum as from 16 September 1986 to date of settlement ...

In Civil Appeal No 577 of 1987:

> plus further interest at the rate of 8% per annum as from 16 September 1986 to date of settlement ...

In Civil Appeal No 578 of 1987:

> together with interest thereon at the rate of 16% per annum on monthly rests calculated from 31 July 1985 to the date of realization ...

In Civil Appeal No 579 of 1987:

> together with interest thereon at the rate of 8% per annum from 16 November 1985 to date of realization ...

It was contended that as the amount of interest due is *calculable* it need not be quantified in the bankruptcy notice. The learned judge agreed and held that the decision of this court in *Low Mun* v *Chung Khiaw Bank Ltd*[1] did not apply to the facts of the cases before him.

It was argued that if the interest is not quantified it is sufficient that it be capable of calculation by stating the rate of interest and the period such interest is payable; and if this is done, the bankruptcy notice is good. The authority for this proposition is said to be the passage in *Low Mun*[1] at p 265 where the court said :

> Clearly, the bankruptcy notice was bad in law as it contained demand for payment of the whole judgment debt within seven days when parts of the whole debt had not been or could not be quantified, and as such were incapable of being made the subject of execution and consequently incapable of being complied with.

We do not agree. The judgment must be read as a whole. The words 'or could not be' appearing in the passage is a statement of fact of that case and not of law. That this is so is apparent from the sentences immediately following the passage, where the court said:

> Non-compliance with the demand to pay such unascertained sums cannot constitute an act of bankruptcy. *The demand for payment in the notice must not only be quantified but must also be the correct sum owing as at the date of the notice.*
> (Emphasis supplied)

Again at p 266 the court said:

> Instead, the creditor merely reproduced the terms of the judgment on the interest and costs in the bankruptcy notice without quantifying the amounts claimed to be due. The Bankruptcy Act provides expressly that the notice must be to pay the judgment debt 'in accordance with the terms of the judgment'. ... Consequently, we are of the view that when you have the judgment in the usual form that we have here, a bankruptcy notice under the Act must require payment of quantified sum or sums alleged to be due according to the terms of the judgment as at the date of issue of bankruptcy notice. The duty is on the creditor to state the correct amount due, and there is no obligation imposed on the debtor to make inquiries if the amount demanded is ambiguous or unascertained. By demanding payment for unspecified sums in the bankruptcy notice, we hold that such demand is not in accordance with the terms of the judgment, and applying the rule of strict construction, the notice cannot be deemed to fall within s 3(1)(i) of the Bankruptcy Act. The amount must be quantified because the debtor is entitled to know from the bankruptcy notice exactly what is being claimed to be due on the whole judgment debt and payable by him within the seven-day period. Non-compliance with the terms of the judgment renders the bankruptcy notice invalid, and that failure to comply with such notice is not an act of bankruptcy, and a bankruptcy petition founded on it must necessarily fail.

For a bankruptcy notice to be valid, therefore, it should state the exact amount due as at the date of the bankruptcy notice. The judgment debtor must know the exact amount he has to pay to avoid bankruptcy. He does not have to make any calculations or enquiries. How the exact amount is arrived at should be particularized as follows:

Particulars of Amount Claimed

Amount adjudged in the Sessions Court at Kota Bharu in Summon No 565 of 1985 dated 16th day of April 1986	$21,924.76
Interest at the rate of 8% per annum from 1 October 1985 to 2 October 1986*	1,753.98
Costs	685.00
Total	$24,363.74

*Date of bankruptcy notice

In the present appeals, the interest sums payable have not been quantified. The bankruptcy notice in all five cases are therefore invalid ab initio and consequently all subsequent proceedings to these bankruptcy notices are a nullity. For these reasons, we allowed the appeals with costs and set aside the orders made by the learned judge.

Appeal allowed.

Solicitors: *C Jegathesan*; *Mokhtar & Co*; *Foo Say Ghee & Co*; *HS Lim Teo & Partners.*

Reported by *Prof Ahmad Ibrahim*

Lee Weng Tuck & Anor v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) – CRIMINAL APPEAL NO 42 OF 1988
MOHAMED AZMI, HARUN AND AJAIB SINGH SCJJ
20 MARCH AND 12 APRIL 1989

Criminal Procedure – Charge of trafficking in dangerous drugs – Plea of guilty – Whether learned trial judge was correct in holding that appellants' plea of guilty was unequivocal – Whether learned judge was correct in refusing to allow appellants to retract their plea – Criminal Procedure Code (FMS Cap 6), ss 173(b), 178 & 342

In this case the appellants had been jointly charged with another accused for trafficking in dangerous drugs in furtherance of a common intention. The appellants had originally